

## The Honorable Robert S. Lasnik

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

STATE OF WASHINGTON; STATE OF CONNECTICUT; STATE OF MARYLAND; STATE OF NEW JERSEY; STATE OF NEW YORK; STATE OF OREGON; COMMONWEALTH OF MASSACHUSETTS; COMMONWEALTH OF PENNSYLVANIA; DISTRICT OF COLUMBIA; STATE OF CALIFORNIA; STATE OF COLORADO; STATE OF DELAWARE; STATE OF HAWAII; STATE OF ILLINOIS; STATE OF IOWA; STATE OF MINNESOTA; STATE OF NORTH CAROLINA; STATE OF RHODE ISLAND; STATE OF VERMONT and COMMONWEALTH OF VIRGINIA,

NO. 2:18-cv-01115-RSL

**PLAINTIFF STATES' MOTION TO  
COMPEL DISCOVERY  
RESPONSES**

**NOTE FOR CONSIDERATION:  
DECEMBER 21, 2018**

Plaintiffs,

V.

UNITED STATES DEPARTMENT OF STATE;  
MICHAEL R. POMPEO, in his official capacity  
as Secretary of State; DIRECTORATE OF  
DEFENSE TRADE CONTROLS; MIKE  
MILLER, in his official capacity as Acting Deputy  
Assistant Secretary of Defense Trade Controls;  
SARAH HEIDEMA, in her official capacity as  
Director of Policy, Office of Defense Trade  
Controls Policy; DEFENSE DISTRIBUTED;  
SECOND AMENDMENT FOUNDATION, INC.;  
AND CONN WILLIAMSON.

### Defendants.

1 Pursuant to Federal Rule of Civil Procedure 37(a) and LCR 37(a), the Plaintiff States  
 2 respectfully move for an order compelling the Private Defendants to respond to *Plaintiffs' First*  
 3 *Set of Interrogatories and Requests for Production to the Private Defendants* (the Requests).

4 **I. INTRODUCTION**

5 The States' Requests are narrowly tailored to seek information about one specific issue:  
 6 the Private Defendants' involvement in any export of 3D-printable firearm files following the  
 7 Court's issuance of a temporary restraining order (TRO) and preliminary injunction rendering  
 8 such export unlawful. The Private Defendants have largely failed to respond substantively to the  
 9 Requests, aside from providing limited answers to a few interrogatories and boilerplate, non-  
 10 responsive answers of dubious accuracy to other Requests. The States respectfully ask the Court  
 11 to compel the Private Defendants to respond to each disputed Request.<sup>1</sup>

12 The States propounded the Requests after learning that, on or about August 24, 2018—a  
 13 few weeks after the Court issued the TRO—Defense Distributed published a video on YouTube  
 14 featuring Cody Wilson encouraging third parties to host the files online in violation of federal  
 15 law as established by the TRO. The video urged others to “HOST OR PAY”: “host the files or  
 16 pay the tax for the men who will,” and promised “two new contracts” in return. The “2nd  
 17 Amendment Foundation” is listed as a “partner” in the video. In addition, Defense Distributed  
 18 has transmitted the files by means other than posting them online, but it remains unclear what  
 19 steps, if any, the company is taking to ensure its distribution does not involve unlawful exports  
 20 to non-U.S. persons. These actions by parties to this case raise serious questions about potential  
 21 ongoing harm and the Private Defendants’ efforts to undermine the injunction. The targeted  
 22 discovery sought by the States is warranted.

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24 <sup>1</sup> For the Court’s convenience, a chart providing a high-level summary the disputed Requests and arguments made herein is attached as Exhibit 12 to the Declaration of Kristin Beneski.

## II. RELEVANT FACTS

## A. The TRO and Preliminary Injunction

On July 30, 2018, the Plaintiff States filed this lawsuit and an emergency motion for a TRO, seeking to prevent irreparable harm that would have been caused if Defense Distributed followed through with its plans to post on the internet 3D-printable files that can be used to automatically manufacture the “Liberator” pistol and other untraceable, undetectable weapons. Dkt. ## 1, 2. Defense Distributed had announced that it planned to post the files online on August 1, 2018, as permitted by the Federal Defendants, per a reversal of their previous regulatory position that posting the files online was an unlawful export of defense articles. *See* Dkt. # 2, pp. 19–20.

On July 31, 2018, the Court issued a TRO enjoining the Federal Defendants from implementing or enforcing their “Temporary Modification of Category I of the United States Munitions List” and the letter to Cody R. Wilson, Defense Distributed, and Second Amendment Foundation issued by the U.S. Department of State on July 27, 2018, and to “preserve the status quo *ex ante* as if the modification had not occurred and the letter had not been issued.” Dkt. # 23, p. 7. On August 27, 2018, the Court converted the temporary restraining order to a preliminary injunction. Dkt. # 95, p. 25. The effect of these orders was to preserve the status quo in which it is a violation of federal law to post on the internet, or otherwise export, files that can be used to automatically manufacture firearms and other weapons using a 3D printer.

In response to the TRO, Defense Distributed removed its files from its website. *See* Dkt. # 63 (Private Defs' Opp. to Mot. for PI), p. 7 (characterizing the TRO as a "take-down order" with which Defense Distributed "complied"); *see also* Beneski Decl., Ex. 3 (Supplemental Responses), pp. 8, 10, 21, 24 (acknowledging that the injunction pertains to "publication via Defense Distributed's internet website").

1      **B. Defense Distributed Urges Others to Host the Files, and Continues Distribution**

2      On August 24, 2018—while the TRO was in effect—the States became aware that  
 3      Defense Distributed had posted a video on YouTube encouraging third parties to host the 3D-  
 4      printable firearm files online. Beneski Decl., Ex. 4<sup>2</sup> & ¶ 6. The video, which featured Defense  
 5      Distributed’s then-director Cody Wilson, encouraged others to “HOST OR PAY”:



6  
 7  
 8  
 9  
 10     *Id.* A voiceover accompanying the “HOST OR PAY” image above called on others to “host the  
 11     files or pay the tax for the men who will.” *Id.* In return, Defense Distributed promised to “offer  
 12     two new contracts to you.” *Id.* The video listed among “Our Partners” the “2nd Amendment  
 13     Foundation.” *Id.* The States promptly contacted Defense Distributed’s counsel about the video,  
 14     who reported a few days later that it had been changed. *Id.*, Ex. 5.

15        In addition, after the Court issued the preliminary injunction, Defense Distributed offered  
 16     to sell copies of the files and deliver them to customers by means other than posting them on the  
 17     internet. *See, e.g., id.*, Ex. 2 (Responses), p. 9 (referencing Defense Distributed’s “customers”);  
 18     Ex. 6 (Twitter page advertising “Files on sale now”); Exs. 7 & 8 (news reports). It is not clear  
 19     what steps, if any, Defense Distributed has taken to ensure that its distributions are not exports  
 20     to non-U.S. persons, or to determine whether recipients of the files are ineligible to possess  
 21     firearms. *See id.* Ex. 8 (reporting that at an August 28, 2018 press conference, Cody Wilson  
 22     “refused to answer a question about the potential for foreign nationals to access the plans”).

24        <sup>2</sup> Exhibit 4, a DVD containing a copy of the video, is being submitted to the Clerk’s Office.

### C. The States' Discovery Requests and the Private Defendants' Initial Objections

On September 20, 2018, the States issued *Plaintiffs’ First Set of Interrogatories and Requests for Production to the Private Defendants* (the Requests). Beneski Decl., ¶ 3 & Ex. 1. The Requests, which are limited in number and scope, seek information related to the “Host or Pay” video, as well as other actions the Private Defendants may have taken with respect to potentially unlawful distribution of 3D-printable firearm files on or after July 31, 2018.<sup>3</sup>

To briefly summarize, ***Interrogatory (“Rog”)*** 1 seeks identification of individuals who are affiliated with or have authority to act on behalf of Defense Distributed. *Id.*, Ex. 1, p. 5. **Rog 3** and ***Request for Production (“RFP”)*** 1, 5, and 6 ask whether the Private Defendants facilitated or assisted anyone in making the files publicly available via the internet on or after July 31, 2018, and seek information and documents related to any post-injunction distribution or sale of the files. *Id.*, pp. 5–6, 8, 9–10. **Rogs 4, 5, and 6** and ***RFPs 2, 3, and 6*** seek information and documents related to the manner in which the Private Defendants distributed any of the files on or after July 31, 2018, and any steps the Private Defendants took or information they collected to determine whether the recipients of the files are U.S. persons, whether they are located within the United States, and whether they may lawfully possess a firearm. *Id.*, pp. 6–7, 8–9, 10. **Rog 9** and ***RFPs 4 and 6*** seek information and documents related to the “Host or Pay” video and any other documents related to the Private Defendants’ participation in any proposed, planned, or actual sale or distribution of the files on or after July 31, 2018. *Id.*, pp. 7–8, 9, 10. In sum, each Request seeks information about the Private Defendants’ involvement in any potentially unlawful post-injunction export of 3D-printable firearm files.

<sup>3</sup> The Private Defendants gave a responsive answer to Rog 2. The States are not currently seeking to compel responses to Rogs 7 and 8 or RFP 7, which seek information and documents related to criminal activity by representatives of Defense Distributed. News reports indicate that the company's co-founder, Cody Wilson, is facing criminal charges in Texas. He is no longer the company's director. *See* Beneski Decl. Ex. 3, p. 4.

1      On October 22, 2018, the Private Defendants responded by objecting to each Request in  
 2 its entirety without providing, or indicating that they would provide, any substantive response.  
 3 Beneski Decl., Ex. 2. Their primary objection was that their Rule 12(c) motion was then pending,  
 4 and that they would not be obligated to participate in any party discovery if the motion were  
 5 granted. *Id.* at 2, 13. They also objected to each Request based on relevance and various  
 6 derivative or related grounds, arguing that the Requests are “not relevant” because there are no  
 7 claims against them and they are not directly enjoined. *See generally id.*

8      **D. Efforts to Resolve Discovery Disputes**

9      On November 2, 2018, the States sent a letter to counsel for the Private Defendants  
 10 addressing deficiencies in their responses to the Requests. *Id.*, Ex. 9. The Private Defendants did  
 11 not respond substantively, but the parties agreed to postpone efforts to resolve any discovery  
 12 disputes until after the Court had ruled on the Private Defendants’ 12(c) motion. *Id.*, ¶ 11. The  
 13 Court entered a stipulated order on November 7, 2018. Dkt. # 127. On November 13, 2018, the  
 14 Court denied the Private Defendants’ 12(c) motion. Dkt. # 130.

15      On November 16, the States’ counsel inquired whether the Private Defendants intended  
 16 to amend or supplement their discovery responses in light of the Court’s order, and requested  
 17 that they do so by November 26—or alternatively, that they provide dates and times for a meet-  
 18 and-confer. Beneski Decl., Ex. 10. They received no response by the requested deadline. *See id.*

19      Ultimately, counsel for the parties met and conferred on Friday, November 30. *Id.*, ¶ 13.  
 20 Counsel for the Private Defendants stated that they would answer Rog 2, but would not  
 21 substantively respond to any of the other Requests, and promised to serve supplemental  
 22 responses on Monday, December 3. *Id.* Counsel for the States advised that they intended to file  
 23 a motion to compel responses to the remaining disputed Requests by the Tuesday, December 4  
 24 deadline for discovery-related motions. *Id.*

## E. The Private Defendants' Amended Objections and Responses

After the close of business on December 3, the night before the discovery-motions deadline, the Private Defendants provided supplemental responses. Exs. 3 & 11; ¶ 14. They answered Rogs 1, 2, and 3, and stated that they had no responsive documents to RFP 1. Ex. 3, pp. 4, 5, 7, 20. They refused to respond to Rog 9, *id.* at 16–17, and their “respon[ses]” to the other Requests are largely non-responsive boilerplate stating that they “did not assist or facilitate any other person” in making the files publicly available on the internet. *See generally id.*

Although the responses to RFPs 2–6 misleadingly state that the “Private Defendants have no nonprivileged documents . . .,” this is part of the boilerplate non-responsive statement, and each RFP response *also* states that “[r]esponsive materials are being withheld . . .” *Id.* at 19, 21, 23, 26, 28, 31, 34. The supplemental responses also assert untimely new objections, all of which are waived and thus not addressed in this motion. *See Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1473 (9th Cir. 1992) (“It is well established that a failure to object to discovery requests within the time required constitutes waiver of any objection.”).<sup>4</sup>

### **III. RULE 37(a) CERTIFICATION**

The undersigned hereby certify that they conferred in good faith with counsel for the Private Defendants via telephone on November 30, 2018, prior to filing this motion. The participants in the conference were Chad Flores, Joel Ard, Jeffrey Rupert, and Kristin Beneski.

## IV. ARGUMENT

#### A. Legal Standard

Parties may obtain discovery regarding “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case . . . .” Fed. R. Civ. P. 26(b)(1).

<sup>4</sup> The waived objections are based on the First and Fourteenth Amendments; a purported “conc[ession]” that mischaracterizes the States’ position; and vagueness as to the terms “assist” and “facilitate.” To avoid confusion, the States cite the Private Defendants’ original responses below in addressing the un-waived objections.

1 The scope of discovery should be “liberally construed”; Rule 26 “contemplates discovery into  
 2 any matter that bears on or that reasonably could lead to other matters that could bear on any  
 3 issue that is or may be raised in a case.” *McArthur v. Rock Woodfired Pizza & Spirits*, 318 F.R.D.  
 4 136, 143 (W.D. Wash. 2016). Courts should generally permit discovery unless the requests have  
 5 “no conceivable bearing on the case.” Wright & Miller, *Federal Practice & Procedure*, § 2008  
 6 (3d ed.). “The party who resists discovery has the burden to show that discovery should not be  
 7 allowed, and has the burden of clarifying, explaining, and supporting objections.” *Everest Indem.*  
 8 *Ins. Co. v. QBE Ins. Corp.*, 980 F. Supp. 2d 1273, 1277 (W.D. Wash. 2013). Untimely objections  
 9 are waived. *Richmark Corp.*, 959 F.2d at 1473; *see also* Fed. R. Civ. P. 33(b)(4).

10 **B. The Requests Seek Highly Relevant Information**

11 The Private Defendants’ primary objection is that the Requests are “not relevant.” They  
 12 assert that “[t]his action does not involve any claim against the Private Defendants” and “[t]he  
 13 Court’s preliminary injunction does not address the Private Defendants; it addresses only the  
 14 Federal Defendants.” *See generally* Beneski Decl., Ex. 2. Even if true, this is not dispositive and  
 15 does not render the requested information irrelevant—far from it.

16 **1. The Private Defendants’ conduct is central to this case**

17 The Requests easily clear the threshold of seeking information that “bears on” issues that  
 18 have been or may be raised in this case. *McArthur*, 318 F.R.D. at 143. It does not matter that no  
 19 claims are asserted against the Private Defendants, for this case would not even exist without  
 20 them. Defense Distributed’s years-long quest for the right to export 3D-printable firearm files, its  
 21 plans to post the files on the internet following the Federal Defendants’ regulatory reversal, and the  
 22 extensive harm that widespread dissemination of the files would cause to the States, are all central  
 23 to the States’ complaint and their requests for injunctive relief. *See* Dkt. # 29 (First Amended  
 24 Complaint), ¶¶ 2–6, 38–217; Dkt. # 2 (Motion for TRO), pp. 3, 18–23; Dkt. # 43 (Motion for

1 PI), pp. 1, 19–24. In issuing the TRO and preliminary injunction, the Court found a “likelihood  
 2 of irreparable injury” to the States if Defense Distributed were to follow through with its plans  
 3 to broadly disseminate the files. Dkt. # 95 (Order), p. 7; *see also id.* at 20.

4 The “Host or Pay” video is evidence that Defense Distributed, as well as the Second  
 5 Amendment Foundation, continued supporting efforts to illegally export the files even after the  
 6 injunction issued. Although the Private Defendants knew they could not lawfully post the files  
 7 on the internet themselves, they urged others to “host the files or pay the tax for the men who  
 8 will.” In addition, Defense Distributed has evidently distributed the files by mail after the  
 9 injunction issued, and may well have done so without taking reasonable steps to determine  
 10 whether the mailings are unlawful exports—such as by determining recipients’ citizenship.  
 11 Indeed, as discussed below, the Private Defendants appear to have an exceedingly narrow  
 12 understanding of what it means to “export” the files in violation of federal law: they erroneously  
 13 believe it is limited only to posting the files on their own website. Their mistaken belief  
 14 underscores the need for discovery to determine whether and to what extent they may be  
 15 involved in illegal and dangerous exports. Similarly, Defense Distributed may well be mailing  
 16 the files to individuals who are ineligible to possess firearms, without checking their age,  
 17 criminal history, or other eligibility requirements. The threat of “violations of gun control laws”  
 18 if 3D-printable firearm files were to proliferate is a significant aspect of the harm to which the  
 19 injunction was addressed. Dkt. # 95, p. 10.

20 These activities, and any other involvement in exporting the files or otherwise creating a  
 21 threat of harm to the States, would therefore be highly relevant to these proceedings. Complete  
 22 responses to all of the disputed Requests will reveal whether there is an ongoing threat of harm  
 23 that may require further action by the States, and may provide evidence of harm to support the  
 24 States’ ultimate request for permanent injunctive relief.

1           **2.       The Private Defendants have a duty not to undermine the injunction**

2           The fact that the Private Defendants are not directly enjoined likewise does not render  
 3 the Requests irrelevant. It is enough that the Private Defendants' conduct with respect to the files  
 4 clearly "bears on" the issues in this case, as discussed above. In addition, inasmuch as the Private  
 5 Defendants are "parties" with "actual notice" of the injunction (Fed. R. Civ. P. 65(d)(2)), they  
 6 have a duty to refrain from actively undermining the injunction's effectiveness—including by  
 7 encouraging or facilitating violations by others.

8           An injunction binds "the parties," their "officers, agents, servants, employees, and  
 9 attorneys," and "other persons who are in active concert or participation with" any of the above,  
 10 as long as such persons "receive actual notice" of the injunction. Fed. R. Civ. P. 65(d)(2). Any  
 11 party subject to an injunction must take "all reasonable steps within the party's power to  
 12 comply." *In re Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir.  
 13 1993). A party may also be held liable for knowingly aiding and abetting another to violate a  
 14 court order. *See Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 14 (1945) ("defendants may not  
 15 nullify a decree by carrying out prohibited acts through aiders and abettors, although they were  
 16 not parties to the original proceeding"). Furthermore, "[e]very affirmative order in equity carries  
 17 with it the implicit command to refrain from action designed to defeat it." *NLRB v. Deena*  
 18 *Artware, Inc.*, 361 U.S. 398, 413 (1960) (Frankfurter, J., concurring). "In deciding whether an  
 19 injunction has been violated it is proper to observe the objects for which the relief was granted  
 20 and to find a breach of the decree in a violation of the spirit of the injunction, even though its  
 21 strict letter may not have been disregarded." *John B. Stetson Co. v. Stephen L. Stetson Co.*, 128  
 22 F.2d 981, 983 (2d Cir. 1941).

23           Here, as discussed above, the Court found in issuing the injunction that "the States will  
 24 likely suffer irreparable injury if the technical data for designing and producing undetectable

1 weapons using a commercially-available 3D printer are published on the internet.” Dkt. # 95 p.  
 2 20. Any actions by parties to this case encouraging, inciting, causing, or failing to take all  
 3 reasonable steps to prevent the posting of the files on the internet or otherwise export them would  
 4 violate the purpose and spirit of the injunction. The “Host or Pay” video is already one example,  
 5 and the Requests seek further information about the video and any other evidence of the Private  
 6 Defendants’ involvement in posting or otherwise illegally distributing the files. Again, this  
 7 discovery will enable the States to determine whether any violations are occurring and to  
 8 evaluate the possibilities for remediation if so.

9 **C. The Private Defendants’ Effort to Limit the Requests to “Defense Distributed’s  
 10 Internet Website” Reflect an Overly Narrow Understanding of an “Export”**

11 The Private Defendants insist that several Requests are “overly broad and unduly  
 12 burdensome” because “the action’s claims and the Court’s preliminary injunction pertain only  
 13 to publication via Defense Distributed’s internet website,” not any other methods of file  
 14 distribution. Beneski Decl., Ex. 2, pp. 8, 10, 21, 24, 27, 29, 32. They read the claims and the  
 15 injunction far too narrowly. The injunction restores the status quo in which it is a violation of  
 16 federal law to *export* 3D-printable firearm files. An “export” includes not only online posting,  
 17 but also “sending a defense article out of the United States in any manner” and “transferring  
 18 technical data to a foreign person in the United States,” among other activities. 22 CFR § 120.17.

19 Rogs 4–6 and RFPs 2–6 seek information related to the Private Defendants’ involvement  
 20 in any sale or distribution of the files by any means, including information that will reveal  
 21 whether and to what extent Defense Distributed attempted to determine whether the recipients  
 22 of the files it distributed were “foreign persons” and whether they were located in the United  
 23 States—i.e., whether the distributions were “exports.” This in turn will show whether Defense  
 24 Distributed actually exported files in violation of federal law in light of the injunction (or whether

1 it acted with reckless disregard as to whether it was exporting them).

2 **D. The Private Defendants' Objections Based on Their Rule 12(c) Motion Are Moot**

3 The Private Defendants initially objected that they “should not be required to comply  
 4 with any [Request] unless and until the Court resolves their Rule 12 motion.” Ex. 2 at 2, 13.  
 5 Even after the Court denied the Private Defendants’ Rule 12 motion, Dkt. # 130, they renewed  
 6 this objection. *See* Ex. 3, pp. 2, 18. It is now moot and no longer has any conceivable merit.

7 **E. The Private Defendants Fail to Assert Any Other Meritorious Objections**

8 The remaining objections based on proportionality, burdensomeness, impropriety, and  
 9 the like lack merit because they are generic, unexplained, and unsupported. *See, e.g., Krausz*  
 10 *Indus., Ltd. v. Romac Indus., Inc.*, No. C10-1204RSL, 2011 WL 13100750, at \*1 n.1 (W.D.  
 11 Wash. Aug. 10, 2011) (“boilerplate objections” are “not sufficient”). Further, these objections  
 12 fail to the extent they are derivative of the meritless objections discussed above.

13 **F. The Private Defendants Should Be Compelled to Fully Respond to All Disputed  
 Requests**

14 The Private Defendants failed to respond to Rog 9, which seeks information about the  
 15 “Host or Pay” video. Ex. 3, pp. 16–17. Their supplemental “responses” to Rogs 4–6 and RFPs  
 16 2–6 are not really responses, but boilerplate stating that they “did not assist or facilitate” others  
 17 in posting the files via the internet. This boilerplate is not responsive to these Requests.

18 The “did not assist or facilitate” boilerplate *is* responsive to Rog 3 and RFP 1, but  
 19 troublingly, it is in tension with the “Host or Pay” video, in which Defense Distributed promises  
 20 “two new contracts” to those who “host the files or pay the tax for the men who will.” The Private  
 21 Defendants also assert a new (waived) objection to the terms “assist” and “facilitate”—leaving  
 22 it unclear how they understood those terms for purposes of their supplemental responses to Rog  
 23 3 and RFP 1. *Id.*, pp. 6–7, 19–20. The supplemental response to RFP 1 also incongruously states  
 24

1 that the Private Defendants “have no nonprivileged documents concerning or relating to” RFP  
 2 1, but at the same time that “[r]esponsive materials are being withheld” on the basis of the stated  
 3 objections (which do not include privilege). *Id.*, pp. 19–20.

4 Further, it is unclear whether the supplemental answers to Rog 1 and 5 are complete.  
 5 Rog 1 seeks identification of “all” persons affiliated with Defense Distributed, and the  
 6 supplemental answer identifies only two individuals—Defense Distributed’s “Director” and its  
 7 “co-founde[r].” *Id.* at 4. Presumably, there is at least one other unidentified co-founder, and  
 8 perhaps other unidentified individuals. Rog 5 seeks a description of “any” methods by which the  
 9 Private Defendants have distributed the files, and the supplemental answer identifies only one  
 10 method—United States Postal Service mail—without indicating whether it is the only method.  
 11 *Id.* at 11. Normally, such matters would be clarified during a meet-and-confer, but since the  
 12 Private Defendants stated that they only intended to supplement Rog 2 and did not provide their  
 13 supplemental responses until the night before the deadline to file discovery-related motions,  
 14 there was no opportunity to confer meaningfully about these responses.

15 As to any responses that may be incomplete or are withholding information, the States  
 16 respectfully request that the Private Defendants be compelled to respond in full.

17 **V. REQUEST FOR ATTORNEYS’ FEES AND OTHER EXPENSES**

18 Should this motion be granted, the Plaintiff States respectfully request that the Court  
 19 award their attorneys’ fees and other expenses incurred in making this motion. *See* Fed. R. Civ.  
 20 P. 37(a)(5). If the Court does so, the States will submit evidence of their reasonable expenses.

21 **VI. CONCLUSION**

22 For the reasons above, the Plaintiff States respectfully request that the Court compel the  
 23 Private Defendants to provide substantive and complete responses to Rog 1, 3, 4, 5, 6, and 9,  
 24 and RFPs 1, 2, 3, 4, 5, and 6, and that the Court award the States’ reasonable expenses and fees.

1 DATED this 4th day of December, 2018.

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1                   **DECLARATION OF SERVICE**

2                   I hereby certify that on December 4, 2018, I caused the foregoing document to be  
3 electronically filed with the Clerk of the Court using the CM/ECF system, which will serve a  
4 copy of this document upon all counsel of record.

5                   DATED this 4th day of December, 2018, at Seattle, Washington.

6                   \_\_\_\_\_  
7                   */s/ Jeffrey Rupert*  
JEFFREY RUPERT

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1 The Honorable Robert S. Lasnik

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6 **UNITED STATES DISTRICT COURT**  
7 **WESTERN DISTRICT OF WASHINGTON**  
8 **AT SEATTLE**

9 STATE OF WASHINGTON; STATE OF  
10 CONNECTICUT; STATE OF MARYLAND;  
11 STATE OF NEW JERSEY; STATE OF NEW  
12 YORK; STATE OF OREGON;  
13 COMMONWEALTH OF  
14 MASSACHUSETTS; COMMONWEALTH  
15 OF PENNSYLVANIA; DISTRICT OF  
16 COLUMBIA; STATE OF CALIFORNIA;  
17 STATE OF COLORADO; STATE OF  
18 DELAWARE; STATE OF HAWAII; STATE  
19 OF ILLINOIS; STATE OF IOWA; STATE  
20 OF MINNESOTA; STATE OF NORTH  
21 CAROLINA; STATE OF RHODE ISLAND;  
22 STATE OF VERMONT and  
23 COMMONWEALTH OF VIRGINIA,

24 Plaintiffs,

v.

17 UNITED STATES DEPARTMENT OF  
18 STATE; MICHAEL R. POMPEO, in his  
19 official capacity as Secretary of State;  
20 DIRECTORATE OF DEFENSE TRADE  
21 CONTROLS; MIKE MILLER, in his official  
22 capacity as Acting Deputy Assistant Secretary  
23 of Defense Trade Controls; SARAH  
24 HEIDEMA, in her official capacity as Director  
of Policy, Office of Defense Trade Controls  
Policy; DEFENSE DISTRIBUTED; SECOND  
AMENDMENT FOUNDATION, INC.; AND  
CONN WILLIAMSON,

Defendants.

[PROPOSED] ORDER GRANTING  
MOTION TO COMPEL DISCOVERY  
RESPONSES

NO. 2:18-cv-01115-RSL

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This matter came before the Court on the Plaintiff States' Motion to Compel Discovery Responses. The Court has considered all briefing on the motion and documents filed therewith, including declarations and exhibits; the arguments of counsel; and the entire record in this case.

Having considered the foregoing, the Court finds that the Private Defendants' objections to *Plaintiffs' First Set of Interrogatories and Requests for Production to the Private Defendants* (Requests) are insufficient and lack merit, and that the Private Defendants improperly failed to respond in full to each of the disputed Requests. The Court further finds that any objections not asserted within 30 days after service of the Requests are untimely and therefore waived. See *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1473 (9th Cir. 1992).

The Private Defendants are hereby ordered to provide complete answers to Interrogatory Nos. 1, 3, 4, 5, 6, and 9, and to provide complete responses to Request for Production Nos. 1, 2, 3, 4, 5, and 6, no later than [REDACTED].

The Plaintiff States are hereby awarded their reasonable expenses, including attorneys' fees, incurred in making the Motion to Compel Discovery Responses. The States shall submit evidence of their reasonable expenses no later than \_\_\_\_\_. The Private Defendants may submit a response no later than \_\_\_\_\_.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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**UNITED STATES DISTRICT JUDGE**

1      Presented By:

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3      Attorney General

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